

Applicant: Kujawski, D.
Application No.: 10/823,061
Amendment and Response dated January 22, 2008
Reply to Final Office Action of August 23, 2007
Docket No.: 760-183 RCE
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Arguments/Remarks:

Claims 1-8, 10-34, 36 and 37 are pending. Claims 22-33 are withdrawn. Claim 1 has been amended to describe the petal-like projections as being non-connected, non-tubular, contoured, lobate-shaped woven sheets, and claim 34 has been amended to describe the non-tubular woven projections as being non-connected, contoured, lobate-shaped woven sheets. Support for these amendments may be found in the specification at paragraph [0021], line 1; paragraph [0023], line 3; and paragraph [0035] lines 5-6; and originally filed claims 9, 34 and 36. Claim 9 has been canceled. No new matter is introduced with this amendment. Entry of the amendment is respectfully requested.

Moreover, the Advisory Action, dated December 12, 2007, stated that the proposed amendments of the Amendment And Response Pursuant To 37 C.F.R. §1.116, filed November 20, 2007, were not considered as they would allegedly raise new issues that would require further consideration and/or search. Therefore, pursuant to MPEP §706.07(b) a final rejection on the enclosed amendment and response, which offers the same amendments as the November 20, 2007 Amendment and Response, is not proper.

Double Patenting Rejection

Claims 1, 3, 4, 18-21 and 34 are provisionally rejected on the ground of non-statutory double patenting over claims 32, 35, 39-41 and 44-46 of co-pending application No. 10/823,456. Upon indication of allowable subject matter, Applicant is willing, if still necessary, to file a terminal disclaimer to obviate the provisional double patenting rejections.

Section 102 Rejections

Claims 1-21 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2003/0078650 to Nunez et al. (hereinafter "Nunez"). Applicant respectfully traverses.

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The examiner alleges that Nunez discloses “a bulbous end scalloped with three contoured, pedal-like projections (914 a-c) [at Fig. 18] which seamlessly extend from the hollow tubular woven portion 917....” (Office Action dated March 8, 2007, page 4, paragraph 11) (emphasis added). It is respectfully submitted that the three projections 914 a-c of Nunez are tubular projections. Indeed, the examiner recognizes that the main body 917 is a tubular body. It is apparent from Fig. 18 that the three projections (914 a-c) are also tubular projections, i.e., similar in shape but smaller in diameter than the main body 917.

In contrast the petal-like projections of independent claim 1 as described as being non-connected, non-tubular, contoured, lobate-shaped woven sheets. Nunez fails to disclose such petal-like projections.

Thus, Applicant respectfully submits that Nunez fails to disclose each and every limitation of independent claim 1. Therefore, reconsideration and withdrawal of the rejection of claim 1 and all dependent claims therefrom, are respectfully requested.

Section 103 Rejections

Claims 34-37 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over Nunez in view of U.S. Patent No. 5,156,619 to Ehrenfeld (hereinafter “Ehrenfeld”). Applicant respectfully traverses.

Nunez fails to teach or suggest a graft having, *inter alia*, a plurality of non-tubular woven projections seamlessly transitioned from a tubular end of a graft, in particular non-tubular woven projections that are non-connected, contoured, lobate-shaped woven sheets.

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Ehrenfeld fails to teach or suggest that its graft should contain a plurality of non-tubular woven projections seamlessly transitioned from a tubular end of its graft, in particular non-tubular woven projections that are non-connected, contoured, lobate-shaped woven sheets. Ehrenfeld specifically describes its flange portion 33 as being a tubular portion. (Ehrenfeld , column 4, lines 57-60). Further, Ehrenfeld describes its flange portion 33 as being a continuous flowing curve. (Ehrenfeld , column 3, lines 62-65).

The examiner may not properly ignore these specific teachings of Ehrenfeld and Nunez in presenting the section 103 rejections. In other words, both Nunez and Ehrenfeld are directed to tubular projections, as specifically taught by these references. Any attempt to modify the teachings of Ehrenfeld and Nunez, to suggest that their specifically described tubular projections are somehow non-tubular is hindsight reconstruction. It is well established, however, that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness, and any attempt at hindsight reconstruction using Applicants' disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993).

Thus, it is respectfully submitted that Nunez and Ehrenfeld, individually or in combination, fail to teach or suggest the invention as presently defined by independent claim 34. Reconsideration and withdrawal of the rejection of claims 34, and all claims dependent therefrom, are respectfully requested.

Summary

Therefore, Applicants respectfully submit that independent claims 1 and 34, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

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Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

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A fee of \$810.00 is believed to be due for the filing of the Request for Continued Examination. The Commissioner is hereby authorized to charge payment of \$810.00 or any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

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